IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1595 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

K C SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1595 of 2000

MR AM RAVAL for Petitioner No. 1-8

MR PD BHATE, AGP for Respondent No. 1

RULE SERVED for Respondent No. 2-4,6-7

RULE UNSERVED for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 24/02/2004

ORAL JUDGEMENT

1. The grievance of the petitioners is that though they have been working as part-timers on the Class-IV posts of Sweepers, Chowkidars, Peon, etc. since the period from 1990 to 1992, their services have not been regularized and they are merely paid the wages meant for the part-timers.

2. In this petition there are 7 petitioners and details with regard to their dates of appointment, posts, working hours and salary have been adequately described in para. 2.1 of the petition. It is, therefore, not repeated here. However, the said details show that the petitioners were required to work even as part-timers for 8 hours at the fixed wage, which, on comparison, is even below the minimum wage prescribed under the legislation. The petitioners have, therefore, approached this Court to seek appropriate directions on the respondents to regularize their services. It may be noted here that the institution i.e. Industrial Training Institute where they are working has also recommended their absorption on permanent basis on the posts on which they are at present rendering services as part-timers, since those posts are permanent posts. The petitioners have placed heavy reliance on Government Resolution dated 26th November, 1981 wherein the head of various departments of the Government have been specifically directed to absorb the part-timers on the permanent posts, if they have rendered more than three years service as part-timers on those posts. The petitioners have averred in the petition that their appointments on the respective post were not by way of back door entry, but they were made as per the quota and their names recommended by the Employment Exchange and thereafter the entire procedure of holding the interview by the Selection committee, etc. was followed and only when they have been selected, their appointments were made. These facts have not been controverted by the respondents by filing any affidavit-in-reply. So far the absorption of the petitioners on the permanent posts is concerned, only one reason has been advanced by the Government that after the circular of 1981 another circular was issued in the year 1995 staying the earlier circular of 1981, containing instructions that no fresh appointments on permanent basis be made in view of the financial constraints experienced by the Government. It appears that so far the present petitioners are concerned, their case for consideration for appointing on permanent basis had already been forwarded to the concerned authority before the circular came to be issued. Inspite of that, they were not appointed on permanent basis and ultimately in the year 2000, they were constrained to approach this Court by way of this

petition.

3. Having heard Mr. A.M. Raval, learned advocate appearing for the petitioners and Mr. P.D. Bhate, Ld. AGP appearing for the respondents and having gone through the record of this petition, it is clear that the sole grievance of the petitioners is that they should be made permanent on the posts on which they have been working since they were appointed in the year 1990-92. The controversy involved in this petition has been the subject matter of different petitions, namely Special Civil Application No. 8917 of 1998 and its cognate matters, which were decided by me by judgment dated 17th February, 2004, whereby these petitions were allowed and the respondents were directed to appoint petitioners of those petitions on permanent posts in Class-IV, if the posts are found vacant and in accordance with their claim in seniority and concerned Recruitment Regulations.. In view of the aforesaid decision, this petition is also required to be allowed and such direction is also required to be issued.

4. The present petition is, therefore, accordingly partly allowed. The respondents are, therefore, now required to be directed that irrespective of the Circular of 21st August, 1995, they shall consider the case of each petitioner for appointment on permanent post in Class-IV and if the permanent posts are found vacant, they shall be appointed on the same in accordance with their claim in seniority and concerned Regulations. This exercise to be carried out as early as possible but in any case not later than 30th May, 2004. If so desired the petitioners can make appropriate representation, which will be considered in light of this judgment and in particular, the direction given therein. Appointment shall not be refused on the grounds of over age and it may amount to giving back door entry.

Rule is made absolute to the aforesaid extent with no order as to costs.

[AKSHAY H. MEHTA, J.]

* Pansala.